

REMARKS

In Paragraph 2, claims 119-177 have been rejected on the basis of the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 37-50 of U.S. Patent 6,245,805 ("the '805 patent"). The conclusion is that although the conflicting claims are not identical, they are patentably indistinct because the compositions of the present claims appear to encompass the compositions [claimed in] the '805 patent, and more specifically, that the taxane compositions of the '805 patent comprising a cyclosporin enhancing agent and optionally other ingredients, anticipate the present broader taxane compositions comprising a carrier and a co-solubilizer. Applicants respectfully traverse the rejection.

Claim 37 of the '805 patent is directed to "[a]n oral pharmaceutical dosage form containing a taxane and an oral bioavailability enhancing agent comprising a cyclosporin." The cyclosporin facilitates absorption of the taxane upon oral ingestion into the systemic circulation. It is not a "carrier" or "co-solubilizer" as these terms are used in the claims of the present application. See, e.g., the disclosure on page 8, lines 8-12. Therefore, the disclosure of claim 37 of the '245 patent does not anticipate any one of claims 119-177 of the present application.

Claim 49 in the '805 patent is dependent upon claim 37, and further defines the dosage form as comprising a polyethoxylated castor oil, alcohol or a polyethoxylated sorbitan mono-oleate. Although the recited elements of claim 49 may have utility in the presently claimed invention in terms of being a "carrier" or "co-solubilizer," the subject matter of claim 49 recites these elements in the alternative. Thus, there is no anticipation. Also, the subject matter of claim 49 would not have rendered the instantly claimed invention obvious.

In view of the foregoing, reconsideration and withdrawal of the rejection based upon obviousness-type double patenting are respectfully requested.

In Paragraph 3, claims 119-177 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending Application No. 09/829,846 ("the '846 application"). The conclusion is that although the conflicting claims are not identical, they are patentably indistinct from each other because overlapping subject matter appears to be involved. Applicants respectfully traverse the rejection.

Claims 332-339 and 400-407 of the '846 application are directed to oral dosage forms. Like claim 37 of the '805 patent, these claims contain recitations of a taxane and an oral bioavailability enhancing agent. There is no positive recitation in any of claims 332-339 and 400-407 of a "carrier," "co-solubilizer" or any specific ingredient that would function as such. Accordingly, there is simply no basis upon which to establish obviousness-type double patenting. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

The Examiner is cordially invited to contact the undersigned if he has any questions.

Application No.: 09/055,818

Docket No.: BAKER 3.0-002 CIP CIP CIP

If there are any additional charges in connection with this response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated:

Respectfully submitted,

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